

SEP 8 1983

CASE NUMBER 83-206

ALEXANDER L. STEVENS,

In the
Supreme Court of the United States

October Term, 1982

Charles M. Miller *Petitioner*

vs.

The United States *Respondent*

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

SUPPLEMENTAL APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

No. 83-568

CHARLES M. MILLER,
Appellant,

v.

UNITED STATES OF AMERICA,
Appellee.

MOTION REQUESTING THAT UNPUBLISHED
DECISION BE REISSUED AS PUBLISHED DECISION

The United States, by its attorneys, pursuant to Rule
18(a) of the Rules of the United States Court of Appeals for

the Federal Circuit, hereby requests the court to reissue its unpublished decision and opinion as a published decision and opinion in the matter entitled *Charles M. Miller v. United States*, Appeal No. 83-568, issued May 11, 1983.

The reasons for this motion are as follows:

(1) The case is of widespread legal interest and of substantial precedential value. Thirteen (13) related cases along the Arkansas River, filed in 1975, 1976 and 1977, have been held in abeyance in the United States Claims Court awaiting a final ruling in the *Miller* case. One case involves the same "cutoff" that was the subject of this case. *Bruce, et al.* (13 plaintiffs) *v. United States*, No. 136-77. Three other cases involve an identical legal issue in a similar factual context, i.e., a different "cutoff" on the Arkansas River. *Hardin v. United States*, No. 294-75; *Willis v. United States*, No. 299-75, and *Hickman v. United States*, No. 420-75. Four other cases involve a similar legal issue concerning the extent of the navigational servitude over former river bed which was caused to be filled in aid of navigation; *Harrison v. United States*, No. 389-75; *Latture v. United States*, No. 449-76; *Moore v. United States*, No. 433-75; *Powers v. United States*, No. 434-75. The ability to cite this case as precedent will facilitate the disposition of these, and the other related, cases.

(2) The decision, on the facts of the case, is one of first impression and adds significantly to the body of law with respect to the definition of the navigation servitude of the United States. In this regard, the Court of Claims, after initially hearing argument on May 3, 1979, before a three judge panel, *sua sponte*, by order of June 8, 1979, recalendared the case for reargument *en banc* on the November 1979 calendar of the court, and, after oral argument *en banc*, in its remand order of November 21, 1979, characterized this matter as a "difficult and complicated case".

For the foregoing reasons, the United States believes that this case adds significantly to the body of law and is of widespread legal interest, and should be published because of its substantial precedential value.

Respectfully submitted,

/s/ John E. Lindskold

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MAY, 1983

90-1-23-2001

CERTIFICATE OF SERVICE

I certify that copies of the foregoing MOTION REQUESTING THAT UNPUBLISHED DECISION BE RE-ISSUED AS PUBLISHED DECISION have been served upon counsel by placing same in the United States mail, postage prepaid and properly addressed, this 27th day of May, 1983, to:

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Supplemental Appendix respectfully submitted by,

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